Supreme Court of the United States

THE FARMERS GRAIN COMPANY OF EMBDEN, a Corporation, et al., *Plaintiffs and Respondents,*

vs.

GEO. F. SHAFER, AS ATTORNEY GENERAL, ET AL., *Defendants and Appellants.*

NOTICE OF MOTION.

To the above named plaintiffs, and to H. A. Libby, and William A. Lancaster, David F. Simpson, John Junell and James E. Dorsey:

Take notice, that the above named defendants and appellants, by their solicitors, will move the Court on April 2nd, 1923, at the opening of the Court, or as soon thereafter as counsel can be heard, for its order advancing the above entitled cause, the motion so to be made, and the affidavits in support thereof, being hereto attached.

Dated March 27th, 1923.

GEO. F. SHAFER,
Attorney General of the
State of North Dakota.

SETH W. RICHARDSON,
Special Assistant Attorney General
of the State of North Dakota,
Solicitors for Appellants.

(Title of Cause.)

MOTION.

Now comes the above named defendants and appellants, by their solicitors, Geo. F. Shafer, Attorney General of the State of North Dakota, and Seth W. Richardson, Special Assistant Attorney General of the State of North Dakota, and move this Honorable Court for an order advancing upon the calendar of the above entitled court the hearing of said cause to as early a date as the Court shall deem proper.

This motion is made upon the annexed affidavit of R. A. Nestos, Governor of the State of North Dakota, and upon all the records and files and proceedings had in said cause.

Dated March 27th, 1923.

GEO. F. SHAFER,
Attorney General of the
State of North Dakota.

SETH W. RICHARDSON,
Special Assistant Attorney General
of the State of North Dakota.

(Title of Cause.)

AFFIDAVIT OF R. A. NESTOS.

State of North Dakota, }
} ss.
County of Burleigh. }

R. A. Nestos being first duly sworn, says, that he is now and for several years last past has been

the duly elected, qualified and acting Governor of the State of North Dakota, and that as such Governor he makes this affidavit in connection with the application of the above named defendants and appellants to the Supreme Court for an order advancing the time of hearing of the above entitled cause to an early date.

Affiant further states that this action involves the validity of a certain law of the State of North Dakota which was duly initiated and thereafter submitted to the voters of the State of North Dakota at the general election held November 7, 1922, and was passed at such election by a vote of 138,735 in favor, and 44,406 against, and that said Act was and is an Act entitled as follows:

> "An Act declaring the purpose of the State of North Dakota to supervise and regulate the marketing of farm products; preventing unjust discrimination, fraud and extortion in the marketing of the same; establishing a system of grading, weighing and measuring farm products; defining the scope and manner of such supervision, and the powers and duties of the persons charged with the same; providing for licensing buyers, solicitors and warehouses handling such farm products, and making an appropriation therefor."

and by its terms known as—

"The North Dakota Grain Grading Act."

That the chief industry of North Dakota is agriculture, and the chief product thereof is wheat and other grains. That the population of the State is in the neighborhood of seven hundred thousand people, and that a very great number of such population are engaged in the raising of grain, and that

the said initiated law above referred to was enacted for the protection of the people of the State, and particularly those persons engaged in the raising of grain; that the said initiated law above referred to is the only law in the State of North Dakota authorizing and permitting the existence of State inspection of grain, and that the said initiated law was passed for the purpose of securing honest and correct grading of grain, and proper returns for valuable dockage, together with proper and sufficient bonds from elevator companies and other persons engaged in the handling of grain, together with various other provisions protecting and assisting the grain producers against fraud and overreaching; that the United States Grain Standards Act does not cover or control, and is not in effect in connection with the sale and purchase and handling of grain at the local elevator points in the State of North Dakota, and that there are no Federal inspectors of grain in North Dakota, and that the aforesaid initiated law is the only law affording or extending to the producers of grain in North Dakota any adequate protection in connection with the handling and marketing of the same.

That the said initiated law has been suspended by the interlocutory injunction heretofore issued by the United States District Court in and for the District of North Dakota, and the various officials of the State of North Dakota on whom is placed the duty of carrying out and enforcing said law, have been restrained from enforcing said law, and the said law, and all portions thereof, with one ex-

ception, are now suspended; and that the said United States District Court did on January 5th, 1923, grant to the above named plaintiffs an interlocutory injunction restraining the carrying out of the enforcement of the provisions of said initiated law, pending a trial and hearing of the said matter upon the merits, said order being issued in a suit in equity brought by the said plaintiffs against the defendants, praying for the issuance of a permanent injunction against the enforcement of the said law, and all provisions thereof, on the ground and for the reason the same is unconstitutional and void.

That the said defendants have duly appealed to the Supreme Court of the United States, as provided by law, from the said interlocutory order of date January 5, 1923, and said appeal is now pending in the above entitled court; that it is highly important for the protection, welfare and guidance of the people of the State of North Dakota, and particularly the persons engaged in the raising and marketing of grain, that the validity and constitutionality of the said initiated act be determined by the Supreme Court of the United States at the earliest possible moment, and particularly prior to the harvesting and marketing of the grain crop for 1923, and that your affiant makes this affidavit as Governor of the State, for the purpose of requesting the said Supreme Court of the United States to advance the hearing and submission of the said appeal now so pending, to as early a date as possible, in order that the final

decision of the said Supreme Court of the United States as to the validity and constitutionality of said Act may be had and filed prior ot the raising and marketing of the grain crop of North Dakota for 1923.

R. A. Nestos

Subscribed and sworn to before me this 27th day of March, 1923.

(Seal) Blanche C. Dooley

Notary Public, Burleigh County, North Dakota.
My commission expires May 22, 1928

The above named defendants, as officials of the State of North Dakota, charged with the carrying out and enforcement of the said provisions of the said North Dakota Grain Grading Act, as aforesaid, do hereby join in the said request made by the said Governor of the State of North Dakota, and do substantiate and corroborate the statements so made by the said Governor in his attached affidavit as being in all respects true and correct.

Geo. F. Shafer
Attorney General of the
State of North Dakota.

Frank Milhollan
C. W. McConnell
Fay Harding
North Dakota Railroad Commission.

(Title of Cause.)

The above named plaintiffs, by their attorneys of record, do upon behalf of said plaintiffs, request and pray the said Supreme Court of the United States to advance the said appeal for hearing at the earliest possible date, in order that the decision of the matters there involved may be made by said court at as early a date as possible, and prior to the time of harvesting and marketing the North Dakota grain crop for 1923.

Dated March 26–1923

Lancaster, Simpson, Junell & Sec

David F. Simpson

Attorneys for Plaintiffs.